IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO.423 OF 1999
IN
SUMMARY SUIT NO. 1343 OF 1999

M/s. Supreme Saree Ltd. ...Plaintiffs.

V/s

Popatlal Jain ...Defendant.

Ms. J.P. Thakkar, advocate for the plaintiffs.

Mr. S.W. Kulkarni, advocate for the defendant.

CORAM : V.M. KANADE, J.
DATE : 9th August, 2004.

P.C.:

1. Heard learned Counsel appearing on behalf of the plaintiffs and defendant.

2. The suit is based on dishonour of cheque which was drawn on the Bank of Baroda for an amount of Rs. 21,39,761/- dated 15/12/1998. Plaintiff had sent advocate's notice immediately thereafter and, in reply, the defendant's advocate stated that three cheques were given to the plaintiffs as collateral security. Thereafter, a reply was sent by the plaintiffs through their

advocate on 9/2/1999 in which it was stated that the amount was due and payable to the plaintiffs on account of the supplies made by the plaintiffs to the defendant. Thereafter, the summary suit was filed. In reply to the Summons for Judgment, defendant has come out with a case that the amount of Rs 21,46,292/- which is reflected in the letter which was sent by the plaintiffs to the defendant dated 19/12/1996. The defendant has also annexed other Statements at Exhibit-2 and 3. It is submitted by the learned Counsel appearing on behalf of the defendant that so far as Exhibits-1 to 3 are concerned, they are admitted by the plaintiffs since there is no specific denial in the affidavit in rejoinder which has been filed by the plaintiffs. It is submitted that in affidavit in rejoinder, with reference to paras 4 to 7, it is stated that the amount was settled between the parties and, therefore, the defendant had issued the cheque. It is submitted that since there is no specific denial about these Exhibits-1 to 3, they are deemed to be admitted and from the said Statements of Account, it is clear that the defendant had paid the amounts which were due and payable from time to time. It is submitted that the defendant is having a Current Account with the plaintiffs for more than 11 years and, therefore, the amounts which were due and payable had been paid from time to time. The learned Counsel appearing on

behalf of the defendant has relied upon the letter which has been sent to the plaintiffs by the defendant dated 10/11/1997 in which it is mentioned that three cheques were given by the defendant to the plaintiffs and that the request had been made not to encash these cheques as necessary instructions had been issued by the defendant to the Bank to stop the payment.

3. In the present case, the suit is based on dishonour of cheque. The letter dated 10/11/1997 is not admitted by the plaintiffs and, in rejoinder, it is specifically stated that the said letter was never received by the plaintiffs. It is pertinent to note here that no letter has been issued by the defendant to the Bank asking the Bank to stop payment of these three cheques. On query being made by the Court regarding the said stop payment letter, the learned Counsel appearing on behalf of the defendant submitted that the said record was not available with the defendant. The endorsement which is made on the dishonoured cheque by the Bank says that the cheque was dishonoured as it had exceeded the arrangement which was made.

4. I am of the view that so far as Exhibits 1 to 4 are concerned, these documents are not admitted by the plaintiffs. The fact remains that the

cheque had been dishonoured. There is nothing on record to indicate that the cheque was given as a collateral security. Even the Statement of Accounts annexed by the defendant at Exhibit-3 indicates that on 25th March, 1997 the balance amount of Rs 13,06,263/- was due and payable. In view of this, conditional leave is granted to the defendant to defend the suit on the defendant depositing an amount of Rs 13 lakhs in this court within a period of 12 weeks from today. Summons for Judgment is accordingly disposed of in the above terms.

V.M. KANADE, J.